

**THIRD AMENDMENT TO THE PROFESSIONAL  
FULL GOLF SERVICES MANAGEMENT AGREEMENT**

This **THIRD AMENDMENT TO THE PROFESSIONAL FULL GOLF SERVICES MANAGEMENT AGREEMENT** (this "Third Amendment"), is made and entered into effective as of April 1, 2019 (the "Effective Date"), by and between the **CITY OF MCKINNEY**, a Texas Municipal corporation (hereinafter "City") and **DWW GOLF MANAGEMENT**, a Texas limited liability corporation (hereinafter "Manager").

**WHEREAS**, the Professional Full Golf Services Management Agreement (the "Management Agreement") was entered into effective April 1, 2009 by and between the City of McKinney, Texas, a Texas municipal corporation ("City"), and DWW Golf Management, a Texas limited liability corporation ("DWW") providing for professional golf services and management of the Oak Hollow Golf Course ("Golf Course"); and

**WHEREAS**, the City and Manager entered into that certain First Amendment to the Professional Full Golf Services Management Agreement, effective January 19, 2010, ("First Amendment") to add a "clubhouse construction fee" to assist with the construction of a new clubhouse; and

**WHEREAS**, the City and Manager entered into that certain Second Amendment to the Professional Full Golf Services Management Agreement, effective July 21, 2010, ("Second Amendment"), which Second Amendment terminated and superseded the First Amendment and also modified and clarified various provisions of the Management Agreement and provided one additional five-year renewal term; and

**WHEREAS**, the Management Agreement requires the Manager to maintain the Golf Course Premises specifically including any and all buildings, improvements and landscaping on the property designated as the Oak Hollow Golf Course; and

**WHEREAS**, the Management Agreement excepted the Clubhouse that was in place on the effective date of the Management Agreement from the Manager's maintenance obligations; and

**WHEREAS**, the City has since designed and constructed a 7,300 square foot Clubhouse and Pro Shop with a full-service grill and bar ("New Clubhouse") that is now being operated by the Manager; and

**WHEREAS**, the City and Manager desire to amend the Management Agreement, as previously amended by the Second Amendment, to clarify that the New Clubhouse is within the Manager's maintenance obligations along with a new format for performing maintenance through the use of City employees, as further set forth and explained herein. All capitalized terms used but not

otherwise defined herein shall have the meaning ascribed to such terms in the Management Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, City and Manager hereby agree to amend, modify and supplement the Management Agreement as follows:

1. Section 1.06, "Operating Expenses," as set forth in the Management Agreement and the Second Amendment is hereby deleted in its entirety and replaced with a new Section 1.06 that is also entitled "Operating Expenses" to read as follows:

**"1.06 Operating Expenses**

Operating Expenses shall include all costs and expenses necessary for the operation of the golf course, including all golf course facilities, in the ordinary course of business, to include, but not be limited to, the following: the cost and fees of the Finance Director's services; insurance (100% if separate policy for City); building maintenance and repair expenses; utilities; any management fee(s); depreciation; amortization; golf rental fees and the cost of salaries, wages and benefits of the Manager. Manager shall obtain all utility accounts solely in Manager's name; however, Manager's water/wastewater usage account will be charged at the City's governmental rate. Operating Expenses shall be the sole responsibility of the Manager and determined in accordance with generally accepted accounting principles consistently applied."

2. Section 2.01, "General Scope of Services," as set forth in the Management Agreement is hereby deleted in its entirety and replaced with a new Section 2.01 that is also entitled "General Scope of Services" to read as follows:

**"2.01 General Scope of Services**

Manager shall have the exclusive right, license, privilege, and duty to operate and maintain the Golf Course Premises. The scope of services required of the Manager under terms of this Agreement include:

A. Overall Course Management in accordance with City golf policy, maintenance and operations standards including, but not limited to:

1. Pro shop operations;
2. Starter services;
3. Tee-time reservations;
4. Marshaling Services;
5. Cart rentals and operations;
6. Driving range operations;
7. Food and beverage service;
8. Equipment maintenance to City's and manufacturers' specifications;
9. Building maintenance and repair of all buildings and structures by and through City Staff to the City's specifications which maintenance and repair obligation shall include the Parks Director's prior inspection and prior approval of a written request maintenance and repair for all buildings and structures, including but not limited to, the structural components of the New Club House and the Tournament Pavilion, Course restrooms and all other structures upon and about the Golf Course Premises; a Manager's request for maintenance and repair shall be evaluated in conjunction with the City's specifications and is subject to denial or deferral if the Parks Director finds that such activities are not appropriate based upon financial, operational, or timing considerations; and

B. Create and approve Golf Course Operating Budget;

C. Approve or disapprove any and all expenses;

D. Collection and accounting of all revenues;

E. Ensuring payment, processing for payment and accounting of all expenses in a timely manner;

F. Formulation and implementation of operating programs, business plans, and budgets;

G. Handling of personnel including employment, training, and terminations;

H. Preparation of monthly and annual financial operating statements;

I. Purchase, retain, repair and replace maintenance equipment to manufacturers' specifications;

J. Maintain the Golf Course utilities and all appurtenances in conformity with City's specifications;

K. Plan and carry out advertising and marketing program for the Golf Course;

L. Attend to all other matters necessary or expedient for the efficient performance of the Golf Course operations; and

M. Provide a beer and wine sales license.

Manager shall commence operations pursuant to this Agreement on April 1, 2009. After commencement of operations pursuant to this Agreement, Manager shall operate the Golf Course in accordance with the terms and conditions herein and City policies.

Manager shall conduct no other operations or activities upon the Golf Course than as are set forth herein."

3. Section 2.02, "City's Responsibilities," as set forth in the Management Agreement is hereby deleted in its entirety and replaced with a new Section 2.02 that is also entitled "City's Responsibilities" to read as follows:

**"2.02 City's Responsibilities"**

City shall perform the following:

A. Administer all terms and conditions of this Agreement;

B. Monitor standards and specifications;

C. Review and approve or disapprove, in advance, any alterations to facilities;

- D. Set all fees;
- E. Determine, fund and implement capital improvements.
- F. Perform building maintenance and repair when requested by Manager for the New Club House and the Tournament Pavilion, Course restrooms and all other structures upon and about the Golf Course Premises to City's specifications and standards; and
- G. Invoice Manager for all maintenance and repair activities at the City's actual internal cost of such activities."

4. Section 2.10, "Operating Payments," as set forth in the Management Agreement is hereby deleted in its entirety and replaced with a new Section 2.10 that is also entitled "Operating Payments" to read as follows:

#### **"Section 2.10 Operating Payments**

"Manager shall remit to the City a monthly payment of eight (8%) percent of the monthly Gross Receipts, as defined in Section 1.04, **plus** \$2.00 for every 9-hole and 18-hole round of golf played at the golf course, each month of the term. Payments will commence on the 15th of the month following the first month of operation, and thereafter not later than the 15th calendar day of each succeeding calendar month throughout the term of this Agreement. Sums paid hereunder are subject to reconciliation and adjustment as provided in Section 2.14 hereto, **plus** the actual internal cost incurred by City in excess of \$8,000.00 per calendar year in performing Manager's maintenance obligations under this Agreement.

In the event of any extension of this Agreement pursuant to Section 2.03, Manager shall continue to pay City the operating payments pursuant to the terms of this Agreement for such extension period, unless otherwise agreed to by City and Manager.

Manager shall submit all such payments at the Office of the Director. Any payment made by check shall be payable to the order of the City of McKinney."

5. Exhibit “A” to the Agreement is hereby amended in part by deleting Section XII, “All Buildings (except Clubhouse) within the Boundaries of the Golf Course” and replacing it with a new Section XII to read as follows:

**“Section XII – All Buildings within the Boundaries of the Golf Course**

1. Maintain and repair all structural and non-structural areas and fixtures of all buildings specifically including, but not limited to, the New Club House and the Tournament Pavilion as needed to ensure proper function and appearance including, but not limited to:
  - Air conditioning units, power tools, appliances, hardware, building structures and fixtures;
  - Painting, carpentry, plumbing and electrical repairs;
  - Porches, walks, parking areas, delivery areas and entries.
2. Course rest rooms – All course rest rooms shall be maintained daily to provide clean and sanitary facilities for the users and employees of the course. Soap, towels, toilet paper, etc., shall be provided in adequate quantity at all times. Portable facilities shall be maintained similarly.
3. Surrounding areas shall be maintained free of weeds, brush, disorganized junk or broken-down equipment, trash piles, etc. “Housekeeping” duties shall be assigned to all maintenance crewmembers and shall be performed daily.
4. An annual inspection of all buildings will be performed by the Building Superintendent or his designated representative. The Manager shall be financially obligated for the City Staff’s performing the required building maintenance and repairs as per the recommendations of the Building Superintendent.”

6. Except to the extent the Management Agreement and the Second Amendment is modified by this Third Amendment, the remaining terms and conditions of the Management Agreement shall remain unmodified and in full force and effect.

7. In the event of any conflict between the terms and conditions of the Management Agreement and/or the Second Amendment and the terms and conditions of this Third Amendment, the terms and conditions of this Third Amendment shall prevail and control.

8. The Management Agreement, Second Amendment, and this Third Amendment embodies the entire understanding between the parties hereto with respect to its subject matter and can be changed only as set forth in the Management Agreement.

9. This Third Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same Third Amendment.

10. All other provisions, terms and sections of the Agreement shall remain in full force and effect, and this Amendment to the Agreement shall in no way release, affect or impair any other provision or responsibility contained in the Agreement.

11. The Effective Date shall be April 1, 2019.

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Third Amendment to the Agreement to be executed by its undersigned duly authorized representative, in multiple copies, each of equal dignity, as of the date hereinabove first mentioned.

**CITY OF MCKINNEY, TEXAS,**  
a Texas municipal corporation

By: \_\_\_\_\_  
PAUL G. GRIMES  
City Manager

Date: \_\_\_\_\_

**DWW GOLF MANAGEMENT,**  
a Texas limited liability corporation

By: \_\_\_\_\_  
DAVE WILLEY

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
EMPRESS DRANE  
City Secretary  
LISA SEWELL  
Deputy City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS       §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of September 2019 by PAUL G. GRIMES, City Manager of the **CITY OF MCKINNEY, TEXAS** a Texas municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS       §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of September 2019, by DAVE WILLEY, Owner of **DWW GOLF MANAGEMENT**, a Texas limited liability corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

PREPARED IN THE OFFICES OF:

*BROWN & HOFMEISTER, L.L.P.*  
740 E. Campbell Road, Suite 800  
Richardson, Texas 75081  
214/747-6100  
214/747-6111 Fax



**Exhibit C**

**Oak Hollow Golf Course**

**2019 OAK HOLLOW RATES**

<u>GREEN FEE</u>	<u>WEEKDAY</u>	<u>WEEKEND</u>
Resident		
• 18 holes	\$22	\$32
• 9 holes	\$16	\$21
Non-Resident		
• 18 holes	\$24	\$35
• 9 holes	\$17	\$22
City Employee		
• 18 holes	\$17	\$17
• 9 holes	\$12	\$12
Senior (55+ years of age)		
• 18 holes	\$17	\$17
• 9 holes	\$12	\$12
Junior (15 years and under)		
• 18 holes	\$17	\$17
• 9 holes	\$12	\$12

**GREEN FEE – TWILIGHT**

After 3 pm	\$16	\$21
After 5 pm	\$11.50	\$16.50
Tournament	\$35	\$45

**MISCELLANEOUS FEES**

Cart Fee		
• 18 holes	\$14.00	
• 9 holes	\$10.50	
Range Balls		
• Large (120)	\$12.00	
• Medium (80)	\$ 8.00	
• Small (40)	\$ 4.00	

**MEMBERSHIP**

Range only	\$34.99 per month
Annual Green Fees (includes range):	
• Resident	\$1150 plus \$500 cart option
• Non-Resident	\$1250 plus \$500 cart option